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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,873	11/03/2003	Michael R. Anderson	10008.3855	2872
22235	7590	06/01/2005	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/605,873	Applicant(s) ANDERSON, MICHAEL R.	
	Examiner Luan K Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 4 are finally rejected under 35 U.S.C. 102(b) as being anticipated by English (1,774,258). English discloses a capsule that contains liquid and/or dry material (8) to be subsequently dispensed into a container (2) comprising a capsule body (4, 9) that is impervious to liquid including a first member (4) and a second member (9) mountable in the first member. The first member body having a top opening (between flange 5) and a sealed closed bottom and a second member having a sealed closed top and an open bottom and a cutting element (12) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body. The cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge (Figures 3-4).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes et al. (3,156,369; hereinafter Bowes'369) in view of English (1,774,258). Bowes'369 discloses a capsule that contains liquid and/or dry material to be subsequently dispensed into a container (11) comprising a capsule body (15, 26) that is impervious to liquid including a first member (15) and a second member (26) mountable in the first member. The first member body having a top opening and a sealed closed bottom (16) and a second member having a sealed closed top (28) and an open bottom and a cutting element (29, 34) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body by a resilient material band (35) (column 4, lines 1-7). Bowes'369 also discloses the other claimed limitations except for the cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge. English teaches a capsule that contains liquid and/or dry material (8) to be subsequently dispensed into a container (2) comprising a capsule body (4, 9) that is impervious to liquid including a first member (4) and a second member (9) mountable in the first member. The first member body having a top opening (between flange 5) and a sealed closed bottom and a second member having a sealed closed top and an open bottom and a cutting element (12) defining the opening bottom. The first and second members in a first mode are sealed forming the capsule body preventing any liquid or dry material from escaping the capsule body. The cutting element comprises a first prong and a second prong disposed

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along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge (Figures 3-4). It would have been obvious to one having ordinary skill in the art in view of English to modify the cutting element of Bowes'369 so the cutting element comprises a first prong and a second prong disposed along the peripheral edge of the second member bottom and having a cutting edge disposed between the first prong and the second prong with the first prong and the second prong being disposed below an opposite bottom edge and forming the lower portion of the bottom edge to facilitate cutting the closed bottom of the first member. As to claim 3, Bowes'369 discloses the first member sealed bottom includes an area of weakened material (31) around its periphery. As to claim 4, the first member (15) has a sealing means (35) that engages the second member.

5. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Rizzardi (5,038,951). Bowes'369 further discloses the capsule comprises the first member has a peripheral lip (21). However, Bowes'369 fails to show the lip comprises apertures. Rizzardi shows a cap (10) having a peripheral lip with apertures (15) (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Rizzardi to modify the first member of Bowes'369 so the lip includes apertures to reduce the material and to reduce the cost of manufacture.

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6. Claim 6 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Pittman (6,053,314). Bowes'369 further fails to show the second member has a hole in the closed end and removable sealing means cover the hole. Pittman shows a lid (32) having a hole (56) and removable sealing means (60) covering the hole. It would have been obvious to one having ordinary skill in the art in view of Pittman to modify the second member of Bowes'369 so the second member includes a hole in the closed end and removable sealing means covering the hole to facilitate inserting the material into the capsule body.

Response to Arguments

Applicant's arguments with respect to 4/14/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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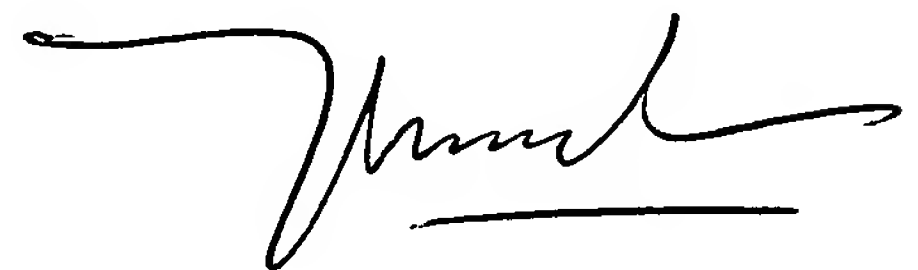
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
May 26, 2005



Luan K. Bui
Primary Examiner